

ALD-041

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-3736

UNITED STATES OF AMERICA,

v.

WALI S. HAMANI,
a/k/a Wallace J. Clemons

Wali S. Hamani,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Criminal Action No. 04-cr-00106)
District Judge: Honorable Robert B. Kugler

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6(a)
November 13, 2009
Before: SLOVITER, AMBRO and SMITH, Circuit Judges

(Opinion filed: :November 23, 2009)

OPINION

PER CURIAM

Appellant Wali Hamani, a pro se prisoner, appeals from the District Court's denial

of his “Request for Rescission of Sentence Based on Lack of Subject Matter Jurisdiction.” For the reasons set forth below, we will summarily affirm. See I.O.P. 10.6.

I.

In 2004, Hamani pled guilty, pursuant to a plea agreement, in the United States District Court for the District of New Jersey to one count of bank robbery in violation of 18 U.S.C. § 2113. After his plea hearing, the United States Probation Office submitted its Pre-Sentence Report (“PSR”), which incorporated the stipulations of the plea agreement, including a three-level decrease for Hamani’s acceptance of responsibility. The report also concluded that Hamani was a career offender, which gave him a base offense level of thirty-two. The report also recommended a three-level increase for brandishing a weapon. At Hamani’s sentencing, the Government asked the Court to impose the maximum statutory sentence of twenty years. The Court adopted the findings of the PSR and sentenced Hamani to 180 months of imprisonment. On appeal, we affirmed Hamani’s judgment of sentence and the United States Supreme Court declined to issue a writ of certiorari.

In October 2006, Hamani filed a timely motion pursuant to 28 U.S.C. § 2255, raising the following grounds for relief: 1) the Government breached the plea agreement by (a) not formally moving the court for the three-point reduction and (b) requesting the maximum sentence; 2) that he was fraudulently induced to accept the plea agreement

because the Government did not have the power to seek the agreed upon reduction; and 3) his attorney was ineffective for failing to challenge the alleged plea agreement breach at either sentencing or on appeal. The District Court denied Hamani's § 2255 motion, finding the first two claims procedurally defaulted and denying the ineffective assistance of counsel claim on the merits. Hamani filed a timely notice of appeal. Upon review, we declined to issue a certificate of appealability.

In August 2009, Hamani filed in the District Court a "Request for Rescission of Sentence Based on Lack of Subject Matter Jurisdiction," wherein he argued that his federal sentence should be rescinded because the District Court lacked jurisdiction to take into account his prior state court convictions when calculating his federal sentence. The District Court denied the "Request for Rescission" and Hamani filed a timely appeal.

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's legal conclusions and apply a clearly erroneous standard to its factual findings. See Cradle v. United States ex rel. Miner, 290 F.3d 536, 538 (3d Cir. 2002). Upon review of the record, we find that the District Court properly denied Haman's request to rescind his sentence. Hamani's claim – which concerns the legality of his sentence – may be raised only in a § 2255 motion. The United States Supreme Court has determined that a § 2255 motion is the presumptive means by which a

federal prisoner may challenge his conviction or sentence.¹ See Davis v. United States, 417 U.S. 333, 343-44 (1974).

To the extent that Hamani's motion may be construed as an attempt to proceed under 28 U.S.C. § 2241, he may do so only if the remedy provided by § 2255 is inadequate or ineffective to test the legality of his detention. See 28 U.S.C. § 2255; In re Dorsainvil, 119 F.3d 245, 249-51 (3d Cir. 1997). "A § 2255 motion is inadequate or ineffective only where the petitioner demonstrates that some limitation of scope or procedure would prevent a § 2255 proceeding from affording him a full hearing and adjudication of his wrongful detention claim." Cradle, 290 F.3d at 538. Because Hamani has not shown that a § 2255 motion would be inadequate to address his claim, he cannot proceed under § 2241.

As Hamani's appeal presents no substantial question, we will summarily affirm. See Third Cir. LAR 27.4; I.O.P. 10.6.

¹We note that because Hamani previously filed a § 2255 motion in the District Court, in order to file a second such motion, he must first obtain authorization from this Court. See 28 U.S.C. § 2244; United States v. Miller, 197 F.3d 644, 649 (3d Cir. 1999).